48A C.J.S. Judges § 248

Corpus Juris Secundum | August 2023 Update

Judges
Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

1. In General

b. Bias or Prejudice

(1) In General

§ 248. Establishing bias or prejudice

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Judges 49(1)

Bias or prejudice on the part of a judge will not be presumed and cannot be proved by direct and positive evidence.

Bias or prejudice on the part of a judge will not be presumed.[1] In fact, the law presumes that a judge is unbiased and unprejudiced in the matters over which the judge presides,[2] and bias or prejudice must be strong enough to overcome the presumption of the judge's integrity.[3] Since prejudice is a state of mind, it cannot be proved by direct and positive evidence.[4] However, where a judge has previously confessed the judge's disqualification because of bias, the parties involved should not be required to submit the determination of their rights to the judge.[5] Bias and prejudice on the part of a trial judge may be established by the judge's conduct in the examination and treatment of witnesses.[6]

A claim of bias must be evaluated in light of the full record, not simply in light of an isolated incident.[7]

CUMULATIVE SUPPLEMENT

Cases:

In the context of statute requiring federal judge to recuse himself from proceeding in which he has personal bias or prejudice concerning a party, any bias must be proven by compelling evidence, and the issue is whether a reasonable person would be convinced the judge was biased. 28 U.S.C.A. § 455(b)(1). U.S. v. Modjewski, 783 F.3d 645 (7th Cir. 2015).

If a law clerk continues to work on the case in which his or her impartiality might reasonably be questioned, the clerk's actual or potential conflict may be imputed to the judge, such that the judge could be required to disqualify himself. 28 U.S.C.A. § 455(a). Mathis v. Huff & Puff Trucking, Inc., 787 F.3d 1297 (10th Cir. 2015).

A judge's prejudice must be shown by the judge's trial conduct; it cannot be inferred from his or her subjective views, and moving party must show that the trial judge's action and demeanor crossed the barrier of impartiality and prejudiced that party's case. Atkins v. Crawford County Clerk's Office, 171 N.E.3d 131 (Ind. Ct. App. 2021).

Reasonable examiner would question judge's impartiality at trial for violation of a domestic-abuse no-contact order, that prohibited defendant from having contact with victim following conviction for disorderly conduct, and thus judge was disqualified, pursuant to Code of Judicial Conduct, from presiding at trial; judge separately investigated a fact not in evidence, namely, service procedures used by court administrations, he announced the findings of the investigation to the parties, he suggested that State consider calling a second witness, he relied on his conclusions in ruling on defendant's motion to dismiss for lack of probable cause, and his investigation revolved around an essential element of the crime, which State was required to prove. Minn. R. Crim. P. 26.03(14)(3); Minn. Code of Jud. Conduct, Rule 2.11(A). State v. Malone, 963 N.W.2d 453 (Minn. 2021).

Defendant failed to demonstrate that judge who had been presiding over his post-conviction hearing was biased or affected by any extrajudicial information that would require judge's disqualification; while judge ultimately recused himself, he did so not because he believed he had been exposed to extrajudicial information about defendant, but because he thought the prosecutor might have talked to him about the case, even though he did not remember anything about the prosecutor doing so, and only other witness on the issue, the prosecutor, also did not recall specifically discussing defendant's case with judge. Mo. Sup. Ct. R. 2-211(A). McFadden v. State, 553 S.W.3d 289 (Mo. 2018).

Judge exhibited a sufficient appearance of prejudice in defendant's resentencing proceeding, in which judge abruptly reimposed maximum sentence of 3.5 to seven years' incarceration after initially imposing 2.5 to five year sentence, as to warrant the grant of new sentencing proceedings for defendant's technical violation of his parole after his release following third degree felony retail theft conviction; judge did deny defendant's accusations of bias and impartiality, but rather quoted portion of resentencing hearing transcript where she rebuked defendant as disrespectful while seeking clarification of his sentence, and judge expressed animus against district attorney's office, which recommended a reduced sentence, during post-conviction relief hearing. Commonwealth v. Lucky, 2020 PA Super 39, 229 A.3d 657 (2020).

Judge presiding over criminal trial for felony offense of failure-to-appear was not required to recuse himself merely because the prosecutor intended to call the court clerk as a witness for prosecutor's case-in-chief. W. Va. Code Ann. § 62-1C-17b(b). State ex rel. Lewis v. Hall, 825 S.E.2d 115 (W. Va. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Ala.—Duncan v. Sherrill, 341 So. 2d 946 (Ala. 1977).

As to hearing and determination of affidavits of bias or prejudice, see § 327.

2 Miss.—Jackson v. State, 1 So. 3d 921 (Miss. Ct. App. 2008).

3 U.S.—U.S. ex rel. Hall v. Washington, 916 F. Supp. 1411 (C.D. Ill. 1996), judgment rev'd in part on other grounds, 106 F.3d 742 (7th Cir. 1997).

4 Okla.—State v. Parks, 32 Okla. Crim. 61, 239 P. 941 (1925).

5 Mich.—In re Hudson, 301 Mich. 77, 3 N.W.2d 17 (1942).

6 Okla.—Twin City Fire Ins. Co. of Minneapolis, Minn. v. First Nat. Bank, 1930 OK 483, 145 Okla. 293, 292 P. 833 (1930).

7 U.S.—In re Federal Skywalk Cases, 680 F.2d 1175 (8th Cir. 1982).

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